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11 Samsung Electronics America, Inc., and Samsung
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HUAWEI TECHNOLOGIES, CO., LTD., et al.

Plaintiffs,

V.

SAMSUNG ELECTRONICS CO., LTD., et al.

Defendants.

CASE NO. 16-cv-02787-WHO

**DEFENDANTS' AND
COUNTERCLAIM PLAINTIFFS'
MOTION FOR LEAVE TO AMEND
ITS INFRINGEMENT
CONTENTIONS**

Date: April 19, 2017
Time: 2:00 p.m.
Place: Courtroom 2, 17th Floor
Judge: Hon. William H. Orrick

21 SAMSUNG ELECTRONICS CO., LTD. &
SAMSUNG ELECTRONICS AMERICA, INC.

Counterclaim-Plaintiffs,

V.

24 HUAWEI TECHNOLOGIES, CO., LTD,
25 HUAWEI DEVICE USA, INC., HUAWEI
26 TECHNOLOGIES USA, INC., & HISILICON
TECHNOLOGIES CO., LTD.

Counterclaim-Defendants.

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NOTICE OF MOTION

2 PLEASE TAKE NOTICE that on April 19, 2017, at 2:00 p.m., or as soon as the matter
3 may be heard by the Honorable William H. Orrick in Courtroom 2, 17th Floor, United States
4 District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate
5 Avenue, San Francisco, CA 94102, Samsung Electronics Co., Ltd., and Samsung Electronics
6 America, Inc. (collectively, “Samsung”) shall and hereby do move for leave to amend their
7 Infringement Contentions under Patent L.R. 3-1 to (1) identify additional accused products and (2)
8 identify new conception dates for Samsung’s U.S. Patent Nos. 8,228,827 and RE44,105. Pursuant
9 to Patent L.R. 3-6, there is good cause for Samsung to amend its Infringement Contentions in both
10 respects because Samsung has been diligent in its discovery efforts, and because
11 Plaintiffs/Counterclaim-Defendants Huawei Technologies Co., Ltd., Huawei Device USA, Inc.,
12 and Huawei Technologies USA, Inc., and Counterclaim-Defendant HiSilicon Technologies Co.,
13 Ltd. (collectively, “Huawei”) will not suffer any prejudice thereby.

14 Counsel for both parties have met and conferred on the issues. Huawei does not oppose
15 the supplementation to add accused instrumentalities but opposes the identification of new
16 conception dates for Samsung's U.S. Patent Nos. 8,228,827 and RE44,105.

17 Samsung's Motion is based on this Notice, the attached Memorandum of Points and
18 Authorities in support thereof, the Declaration of Iman Lordgooei¹ in support thereof, the
19 pleadings and papers on file in this action, and such other and further matters as the Court deems
20 appropriate.

REQUESTED RELIEF

22 An order granting Samsung leave to amend its Infringement Contentions under Patent L.R.
23 3-1 to (1) identify additional accused products and (2) identify new conception dates for
24 Samsung's U.S. Pat. Nos. 8,228,827 and RE44,105.

¹ Unless otherwise indicated, all exhibits are attached to the Declaration of Iman Lordgooei.

1 DATED: March 13, 2017

Respectfully submitted,

2 QUINN EMANUEL URQUHART &
3 SULLIVAN, LLP

4 By /s/ Victoria F. Maroulis

5 Charles K. Verhoeven
6 Kevin P.B. Johnson
7 Victoria F. Maroulis
8 David A. Perlson

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2 Attorneys for Samsung Electronics Co., Ltd.,
3 Samsung Electronics America, Inc., and
4 Samsung Research America, Inc.

1 **I. INTRODUCTION**

2 Samsung respectfully requests leave to amend its Infringement Contentions in two
 3 respects. *First*, Samsung seeks to amend its Infringement Contentions to include additional
 4 infringing instrumentalities based on information received in the course of discovery and from
 5 Huawei. *Second*, Samsung seeks to amend the conception dates identified with respect to
 6 Samsung's U.S. Pat. Nos. 8,228,827 and RE44,105 in Samsung's initial Patent L.R. 3-1
 7 disclosures based on the recent location and review of additional materials evidencing earlier
 8 conception of those patents. Pursuant to Patent L.R. 3-6, there is good cause for Samsung to
 9 amend its Infringement Contentions because Samsung has been diligent in its discovery efforts,
 10 and because Huawei will not suffer any prejudice.

11 Samsung has exercised careful diligence in seeking leave to amend its Infringement
 12 Contentions. With regard to Samsung's unopposed request to add additional instrumentalities,
 13 Samsung's initial Infringement Contentions were based on publicly available information
 14 regarding the compliance of certain Huawei products with LTE or UMTS cellular networks. In
 15 response to discovery served by Samsung, Huawei identified additional compliant
 16 instrumentalities that in turn led Samsung to identify even more instrumentalities, including those
 17 released subsequent to Samsung's initial contentions. Samsung diligently apprised Huawei of the
 18 discrepancy between those instrumentalities identified as standard-compliant and those listed in
 19 Samsung's infringement contentions, and immediately informed Huawei that it would be
 20 amending its contentions to include those newly identified instrumentalities.

21 With regard to Samsung's request to amend the identified conception dates for the '827
 22 Patent and RE'105 Patent, despite diligent document collection and discovery efforts, Samsung
 23 did not locate, and was consequently unable to review, certain documents supporting the earliest
 24 conception dates Samsung now seeks to identify. Promptly after Samsung's review of those
 25 documents, Samsung notified Huawei that it would be seeking to amend those two conception
 26 dates accordingly.

27 Not only was Samsung diligent in seeking to amend its infringement contentions in both
 28 respects, the substance and timing of the proposed amendments removes any question about

1 prejudice to Huawei. The additional instrumentalities are not transformative to existing
 2 infringement theories, and Huawei has agreed that it would not be prejudiced by their addition to
 3 the case.

4 Moreover, Huawei will suffer no prejudice by Samsung's amendment to the disclosed
 5 conception dates. Samsung has already agreed that Huawei may amend its invalidity contentions
 6 to the extent it believes that they would be impacted by this amendment, removing any possible
 7 prejudice. This case is still in its earliest stages, with claim construction briefing yet to begin, and
 8 the amended infringement contentions do not alter any deadlines in the case.

9 Under these circumstances, where Samsung has been diligent in its discovery efforts and
 10 Huawei does not suffer any prejudice through the amendment of infringement contentions,
 11 Samsung should be permitted leave to amend its infringement contentions.

12 **II. FACTUAL BACKGROUND**

13 **A. October 25, 2016 — Samsung timely serves its Patent L.R. 3-1 and 3-2**
 14 **disclosures on Huawei.**

15 On October 25, 2016, Samsung served Huawei its Patent L.R. 3-1 infringement
 16 contentions, setting forth Samsung's contentions regarding Huawei's infringement of U.S. Patent
 17 Nos. 8,228,827 ("the '827 patent"), 8,315,195 ("the '195 patent"), RE44,105 ("the RE'105
 18 patent"), 8,457,588 ("the '588 patent"), 8,509,350 ("the '350 patent"), 9,113,419 ("the '419
 19 patent"), 8,619,726 ("the '726 patent"), 8,761,130 ("the '130 patent"), and 9,288,825 ("the '825
 20 patent") (collectively, "Samsung's Patents-in-Suit"). (Ex. 1). Samsung also served its document
 21 production under Patent L.R. 3-2. (Lordgooei Decl. ¶ 2). In response to correspondence from
 22 Huawei (Ex. 2), Samsung served supplemental infringement contentions on December 2, 2016.
 23 (Lordgooei Decl. ¶ 5; Ex. 3). Although not explicitly called for by the N.D. Cal. Patent Local
 24 Rules, Samsung specified conception dates for each of Samsung's Patents-in-Suit in these
 25 supplemental infringement contentions.²

26 ² Samsung notes that the parties disagree regarding whether Patent L.R. 3-1 requires specific
 27 identification of a conception date as opposed to identification of a priority date. *See* [Huawei
 28 Letter] (Ex. 2) (citing *Harvatek Corporation v. Cree, Inc.*, No. C 14-05353 WHA, 2015 WL
 4396379, *2-*3 (N.D. Cal. July 17, 2015); *Blue Spike, LLC v. Adobe Systems, Inc.*, No. 14-01647,

1 On January 10, Samsung notified Huawei that it would be relying on a conception date of
 2 January 26, 2007 for the '827 patent, clarifying its previous identification of January 2007 in the
 3 supplemental infringement contentions. (Ex. 4 at 1.) Huawei's December 15, 2016
 4 correspondence on this issue noted that Huawei "agree[d] that neither party will be required to
 5 seek leave to amend their respective infringement contentions in this instance." (Ex. 5.)

6 **B. January 20, 2017 — The parties timely exchange Patent L.R. 3-3 and 3-4**
 7 **disclosures.**

8 In accordance with the case schedule, and Patent L.R. 3-3 and 3-4, the parties exchanged
 9 invalidity contentions and accompanying document productions on January 20, 2017. In those
 10 contentions, with respect to the '827 patent, Huawei asserted that Samsung is not entitled to a
 11 priority date of February 2007, the date of an earlier Korean application, for the asserted claims of
 12 the '827 patent. (See Ex. 6 at 90.) Huawei also disclosed allegedly invalidating prior art that it
 13 claims was available as early as December 2005, and as late as January 5, 2010. (*Id.* at 27.) With
 14 respect to the RE'105 patent, Huawei asserted that Samsung is not entitled to a priority date of
 15 April 6, 2005, the filing date of the provisional to which the RE'105 patent claims priority. (See
 16 *id.* at 97.) Huawei also disclosed allegedly invalidating prior art that it claims was available as
 17 early as 1999, and as late as June 8, 2009. (*Id.* at 32-33.)

19 **C. January 25, 2017 — Samsung notifies Huawei of its intention to add accused**
 20 **instrumentalities.**

21 On January 25, 2017, Samsung notified Huawei that Samsung would be supplementing its
 22 infringement contentions to include instrumentalities identified for the first time in Huawei's
 23 November 28, 2016 First Supplemental Interrogatory Responses, as well as products that
 24 Samsung's ongoing investigation uncovered as being sold in the United States. (Ex. 7.) Samsung
 25 2015 WL 335842, at *7 (N.D. Cal. Jan. 26, 2015)). The Patent Local Rules only explicitly require
 26 disclosure of a priority date. *See, e.g., OpenTV, Inc. v. Apple Inc.*, No. 15-CV-02008-EJD (NC),
 27 2016 WL 3196643, at *2 (N.D. Cal. June 9, 2016). And in each of the cases cited by Huawei,
 28 corresponding discovery requests—not present here—mandated disclosure of the information
 sought. In any event, Samsung agreed to provide the conception date information requested by
 Huawei and good cause exists for Samsung's amendments to its conception date disclosures even
 assuming such were required by the Patent Local Rules.

1 also sought confirmation that Huawei would not oppose a motion for leave to so supplement its
 2 infringement contentions. (*Id.*)

3 **D. January 12- February 14, 2017 — Samsung locates and reviews additional**
 4 **inventor documents.**

5 Though Samsung was diligent in searching for, reviewing, and producing documents
 6 related to its Patent L.R. 3-2 obligations, documents from archival resources including those
 7 associated with a prior litigation involving different counsel of record were located after that date.
 8 (Lordgooei Decl. ¶ 3.) In accordance with its ongoing discovery obligations, Samsung promptly
 9 and diligently reviewed those documents and accordingly produced responsive, non-privileged
 10 information. (*Id.*) In connection with that review, Samsung identified documentation supporting
 11 a conception date of January 22, 2007 for the '827 patent and March 30, 2005 for the RE'105
 12 patent, preceding Samsung's earlier identified conception dates by 4 and 7 days, respectively.
 13 (Exs. 1, 3, 4.)

15 **E. February 15, 2007 — Samsung notifies Huawei.**

16 On February 15, 2007, Samsung emailed Huawei a copy of Samsung's draft supplemental
 17 Patent L.R. 3-1 disclosures, adding the earlier conception dates and additional Huawei products.
 18 (Ex. 9 at 1.) Samsung asked that Huawei state by February 17, 2017 whether it would oppose
 19 Samsung's supplementation. (*Id.*) Receiving no response, Samsung emailed Huawei on February
 20 22, 2017 asking Huawei to confirm by February 24, 2017 whether they oppose Samsung's
 21 supplementation. (Ex. 8.) Huawei responded that it would not oppose the revisions to the list of
 22 accused instrumentalities but that it would oppose any revisions to the claimed conception dates.
 23 (Ex. 9.)

25 **F. March 2, 2007 — Lead counsel meet and confer.**

26 On February 27, 2017, in response to Huawei's correspondence, Samsung requested a lead
 27 counsel meet and confer to discuss Huawei's opposition to Samsung's anticipated motion. (Ex.
 28

1 10.) In connection with that request, Samsung offered, as a compromise, a draft stipulation
 2 granting Samsung leave to serve supplemental Patent L.R. 3-1 disclosures with the revised
 3 conception dates and, in exchange, Huawei leave to serve supplemental invalidity contentions in
 4 response thereto within 30 days (*i.e.*, only to identify any additional prior art pre-dating the new
 5 conception dates). (*Id.*)
 6

7 On the meet and confer, Huawei requested additional information regarding the good cause
 8 for Samsung's proposed amendment and Samsung explained that it proposed the amendments as a
 9 result of newly found information. (Ex. 11 at 2-3.) Samsung also stated its preference to avoid
 10 motion practice, and asked Huawei to explain how it would be prejudiced by an amendment so
 11 early in the case. (*Id.*) Huawei did not identify any specific prejudice but said that it would
 12 discuss and consider Samsung's proposal. (*Id.*)
 13

14 On March 3, 2017, Huawei indicated that it "continue[d] to oppose Samsung's request to
 15 change its conception dates" but also requested that Samsung provide Huawei with the documents
 16 corroborating the amended conception dates. (Ex. 11 at 2.) On March 8, 2017, Samsung provided
 17 Huawei with a non-privileged document supporting Samsung's proposed amendment, as well as a
 18 privilege log for a privileged document supporting earlier conception of the RE'105 patent. (Ex.
 19 11 at 1.) Also attached to that correspondence was a redline version showing the proposed
 20 amendments to Samsung's Infringement Contentions. (Ex. 12.) On March 9, 2017, Huawei
 21 confirmed that it "maintains its objection to Samsung's motion for leave to amend its conception
 22 dates." (Ex. 11.)
 23

24 **III. LEGAL STANDARD**

25 Amendment of infringement contentions "may be made only by order of the Court upon a
 26 timely showing of good cause." Patent L.R. 3-6. "[A] two-step analysis is required to determine
 27 if good cause exists: first, the court must determine whether the moving party was diligent in
 28 amending its contentions; second the court must determine whether the non-moving party would

1 suffer undue prejudice if the motion to amend were granted.” *DCG Sys. v. Checkpoint Techs.,*
 2 *LLC*, No. C 11-03792 PSG, 2012 WL 1309161, at *3 (N.D. Cal. Apr. 16, 2012). Diligence
 3 notwithstanding, a court may find good cause to grant leave to amend if there would be no undue
 4 prejudice to the non-moving party. *See, e.g., Apple Inc. v. Samsung Elecs. Co.*, No. CV 12-00630
 5 LHK, 2012 WL 5632618, at *5-6 (N.D. Cal. Nov. 15, 2012). “The rules are designed to require
 6 parties to crystallize their theories of the case early in the litigation and to adhere to those theories
 7 once they have been disclosed” *LG Elecs. Inc. v. Q-Lity Computer Inc.*, 211 F.R.D. 360
 8 (N.D. Cal. 2002) (internal quotation marks omitted). However, “the rule is not a straitjacket into
 9 which litigants are locked from the moment their contentions are served.” *Comcast Cable*
 10 *Comm’ns Corp., LLC v. Finisar Corp.*, No. C 06-04206 WHA, 2007 WL 716131, at *2 (N.D.
 11 Cal. Mar. 2, 2007).

12 Indeed, even leave to amend to add entirely new claims may be granted when there is
 13 “ample time left on the pretrial clock” such that there is sufficient time for an opposing party to
 14 respond to new claims “without any undue prejudice.” *Apple*, 2012 WL 5632618, at *6. Such
 15 requests may also be allowed where they “do[] not appear to be motivated by gamesmanship.”
 16 *Yodlee, Inc. v. CashEdge, Inc.*, No. C 05-01550 SI, 2007 WL 1454259, at *2 (N.D. Cal. May 17,
 17 2007).

18 **IV. ARGUMENT**

19 There is good cause for Samsung to amend its Infringement Contentions because Samsung
 20 has been diligent in its discovery efforts, and because Huawei will not suffer any prejudice.
 21 Huawei does not oppose the addition of the new instrumentalities and Samsung’s offer to permit
 22 amendment to Huawei’s invalidity contentions cures any possible real or perceived prejudice as to
 23 the new conception dates. Moreover, this case is still in its earliest stages—claim construction has
 24 just begun, and the close of fact discovery is a minimum of six months away.

25 A. **Good cause exists for—and Huawei does not oppose—Samsung’s motion to**
 26 **add the additional instrumentalities.**

27 Samsung has been diligent in amending its Infringement Contentions to add the new
 28 instrumentalities. “[T]he diligence required for a showing of good cause has two phases: (1)

1 diligence in discovering the basis for amendment; and (2) diligence in seeking amendment once
 2 the basis for amendment has been discovered.” *Positive Techs., Inc. v. Sony Elecs., Inc.*, No. C
 3 11-2226 SI, 2013 WL 322556, at *2 (N.D. Cal. Jan. 28, 2013). Samsung has met both.

4 Samsung was diligent in discovering the basis for its amendment. “In considering the
 5 party’s diligence [in discovery], the critical question is whether the party could have discovered
 6 the new information earlier had it acted with the requisite diligence.” *Apple*, 2012 WL 5632618,
 7 at *2. Samsung’s amendments are based on Huawei’s discovery responses, which in turn led
 8 Samsung to additional information regarding potentially infringing instrumentalities. Given the
 9 conflicting nature of the publicly available information regarding model numbers and their
 10 compliance with various standards, it was reasonable that Samsung needed to rely on Huawei’s
 11 discovery responses in identifying all accused instrumentalities. Samsung’s amendments also add
 12 certain Huawei products that were first released or offered for sale in the United States only after
 13 service of Samsung’s initial infringement contentions. Samsung could not have included these
 14 products in its original contentions. In any event, Huawei has not made any claim that Samsung
 15 did not act with diligence and Huawei has stated that it will not oppose Samsung’s addition of new
 16 instrumentalities.

17 Moreover, even if the Court were to find that Samsung has not demonstrated the requisite
 18 diligence under the Patent L.R. 3-6, the Court should nevertheless grant leave to amend because
 19 Huawei will suffer no prejudice if Samsung is granted leave to amend. In considering prejudice to
 20 defendants, courts consider whether the defendant will have time to adequately respond to the
 21 amendments. *See Apple*, 2012 WL 5632618, at *5-6 (granting leave to add additional claims to
 22 infringement contentions several months after invalidity charts had been served, even though court
 23 found plaintiff failed to establish diligence, because defendant had “ample” time to respond). The
 24 length of time before discovery closes is an important factor in this analysis. *See Altera Corp. v.*
 25 *PACT XPP Technologies, AG*, No. 14-CV-02868-JD, 2015 WL 928122, at *2 (N.D. Cal. Feb. 19,
 26 2015) (granting leave to amend after noting that the length of time until close of discovery is
 27 greater than in other Northern District cases granting leave to amend).

28

1 Samsung provided Huawei with its amended Infringement Contentions more than six
 2 weeks before the joint claim construction statement was due, more than three months before
 3 Huawei's first claim construction brief is due, and four months before the claim construction
 4 hearing itself—giving Huawei ample time to investigate Samsung's infringement theories with
 5 regard to the additional accused instrumentalities and prepare its defenses accordingly. *See Life*
 6 *Techs. Corp. v. Biosearch Techs., Inc.*, No. C 12-00852-WHA, 2012 WL 1831595, at *2 (N.D.
 7 Cal. May 18, 2012) (permitting amendments two months before close of fact discovery); *see also*
 8 *Yodlee*, 2007 WL 1454259, at *3 (finding that two months before the close of fact discovery was
 9 “ample time”). This case is still in its relatively early stages and this amendment would have no
 10 effect on the trial schedule or any other dates in this case.

11 Furthermore, the change here is additive, not transformative. This is not a “shifting sands”
 12 approach to patent litigation, where infringement theories are being changed throughout the case.
 13 Samsung is maintaining its infringement theories asserted in its original infringement contentions.

14 **B. Good cause exists for Samsung's motion to amend its conception dates.**

15 Samsung similarly meets the requirements for diligence with respect to its efforts to amend
 16 its conception dates. Samsung was diligent both in discovering the basis for amendment and in
 17 seeking the amendment itself. *Positive Techs.*, 2013 WL 322556, at *2.

18 Though Huawei opposes Samsung's amendment, as of this time, Huawei has made no
 19 contention that Samsung failed to exercise diligence in locating and reviewing the documents
 20 corroborating the earlier conception dates. Discovery is still in its early stages and, though
 21 Samsung searched for and produced documents in connection with its Patent L.R. 3-2 obligations,
 22 Samsung was only recently able to locate these additional documents. (Lordgooei Decl. ¶ 3.)
 23 There are multiple inventors listed on each of the asserted patents, complicating Samsung's
 24 document collection efforts. And certain of the documents were only maintained in connection
 25 with other litigations, necessitating separate search and review of archival resources. (*Id.*)

26 Moreover, Samsung was also diligent in seeking to amend its contentions, notifying
 27 Huawei of Samsung's intention to supplement its infringement contentions within days of
 28

1 Samsung's review of the relevant documents. Any delay in seeking the Court's assistance to
 2 resolve this matter can be attributed to the parties' efforts to avoid resorting to motion practice.

3 Even assuming *arguendo* Samsung did not exercise the requisite diligence, the lack of
 4 prejudice to Huawei counsels in favor of permitting Samsung's requested amendment, which
 5 seeks to move two conception dates by less than a week. Huawei's invalidity contentions
 6 themselves identify prior art references not only prior to Samsung's updated conception dates for
 7 the RE'105 and '827 patents, but also identify references dated years after Samsung's initially
 8 proposed conception (and priority) dates. Huawei further alleged that neither patent is entitled to
 9 the priority date claimed by virtue of earlier applications, which again is reflected in Huawei's
 10 identification of prior art. (Ex. 11 at 90, 97.) Therefore, it follows that Huawei's search for prior
 11 art, and invalidity positions, would have been no different, regardless of Samsung's amendment.
 12 Indeed, during the meet and confer process, Huawei was unable to identify any prejudice it might
 13 suffer by Samsung's amendment.

14 Further mitigating any possible prejudice to Huawei, Samsung has agreed to provide
 15 Huawei ample time to amend its invalidity contentions to add any additional prior art it deems
 16 necessary to address Samsung's conception dates for the '827 and RE'105 patents. The thirty
 17 days offered by Samsung—which is in addition to the time Huawei has already had since
 18 receiving notice of the earlier conception dates—is more than sufficient to allow Huawei to revisit
 19 its prior art search (which on its face did not rely on Samsung's alleged conception dates), and
 20 would not otherwise alter other deadlines in this matter. Any amendments to Huawei's
 21 contentions would be complete well before the parties submit their opening claim construction
 22 briefs on May 19, 2017.

23 Finally, to the extent Huawei may take the position that Samsung's proposed amendments
 24 would be "futile," such a contention is, at best, premature. Patent Local Rule 3 serves a notice
 25 function that is "designed to provide structure to discovery and to enable the parties to move
 26 efficiently toward claim construction and the eventual resolution of their dispute." *Word to Info,*
 27 *Inc. v. Google Inc.*, No. 15-CV-03486-WHO, 2016 WL 3648605, at *3 (N.D. Cal. July 8, 2016)
 28 (internal citations omitted); *see also O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d

1 1355, 1365-66 (Fed. Cir. 2006) (“The local patent rules in the Northern District of California
 2 [require] both the plaintiff and the defendant in patent cases to provide early notice of their
 3 infringement and invalidity contentions, and to proceed with diligence in amending those
 4 contentions when new information comes to light in the course of discovery.”). Accordingly,
 5 Samsung’s Patent L.R. 3-1 disclosures, and the proposed amendments thereto, serve to notify
 6 Huawei of those theories that Samsung may ultimately pursue at trial. Whether Samsung
 7 ultimately prevails on those theories, or Huawei is successful at proving otherwise, is a question
 8 for a later date. *See, e.g., The Bd. of Trustees of Leland Stanford Junior Univ. v. Roche Molecular*
 9 *Sys., Inc.*, No. C 05-04158 MHP, 2008 WL 624771, at *4 (N.D. Cal. Mar. 4, 2008) (“Though
 10 Roche may argue [futility of amendment] in a summary judgment motion, ***the good cause***
 11 ***requirement does not require the court to analyze the strength of plaintiff’s infringement***
 12 ***contentions.***”) (emphasis added); *Gen. Atomics v. Axis-Shield ASA*, No. C05-04074SI, 2006 WL
 13 2329464, at *2 (N.D. Cal. Aug. 9, 2006) (“General Atomics also argues that Axis Shield’s motion
 14 should be denied because the new theory of infringement set forth in Axis Shield’s proposed
 15 amendment is futile. The Court cannot agree that Axis Shield’s new theory of infringement can be
 16 disposed of so easily. Rather, the Court finds that the theory raises factual issues that are best
 17 addressed on summary judgment.”).

18 **V. CONCLUSION**

19 Samsung has been diligent in seeking leave to amend its Infringement Contentions and
 20 Huawei will not be prejudiced by Samsung’s amendments. Under Patent L.R. 3-6 and applicable
 21 case law, good cause exists. Samsung therefore respectfully seeks the Court’s leave to amend its
 22 Infringement Contentions.

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Respectfully submitted,

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